

three years beginning on December 19, 1991, provided however, that the bank shall be relieved of the obligation to divest at least  $\frac{1}{3}$  of its excess investment each year if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of its current tier one capital. If the bank's maximum permissible investment set by the FDIC is lower than 100 percent of tier one capital, paragraph (d)(5)(ii) of this section shall apply.

(ii) If an insured state bank does not receive approval in connection with a notice filed pursuant to paragraph (d)(1) of this section to retain its outstanding investment in listed stock and/or registered shares, the bank must, as quickly as prudently possible but in no event later than December 19, 1996, divest the listed stock and/or registered shares for which approval to retain was denied. The bank must file a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located no later than 60 days after the bank receives notice that approval to retain the investment(s) was denied. The divestiture plan shall contain the information specified in paragraph (c)(3) of this section.

[57 FR 53234, Nov. 9, 1992; 58 FR 59787, Nov. 10, 1993]

**§ 362.4 Activities of insured state banks and their subsidiaries.**

(a) *General prohibitions.* (1) Except as otherwise provided in this part, after December 19, 1992, an insured state bank may not directly engage as principal in any activity that is not permissible for a national bank, and a majority-owned subsidiary of an insured state bank may not engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its majority-owned subsidiary will not pose a significant risk to the affected deposit insurance fund. Applications for consent to directly, or indirectly through a majority-owned subsidiary, engage as principal in activities that are not per-

missible for a national bank or a subsidiary of a national bank should be filed in accordance with § 362.4(d). An insured state bank must file an application for each subsidiary regardless of whether the bank previously obtained consent for a subsidiary to engage as principal in the same activity. An insured state bank that obtained the FDIC's consent pursuant to § 333.3 of this chapter prior to that section's repeal to directly or indirectly through a subsidiary engage as principal in an activity that was otherwise impermissible under § 333.3 of this chapter and which is impermissible under this part without the FDIC's consent, does not need to obtain the FDIC's consent pursuant to this part in order to continue the activity.

(2) Except as otherwise provided in this part, no insured state bank may directly or indirectly through a subsidiary, engage in insurance underwriting except to the extent such activities are permissible for a national bank.

(b) *Phase-out for banks that do not meet capital standard.* (1) Any insured state bank which does not meet the applicable minimum capital requirements set out in paragraph (a)(1) of this section and which as of December 19, 1992, directly, or indirectly through a subsidiary, engaged as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank, must cease the impermissible activity as soon as practicable but in no event later than June 8, 1994, unless an extension is granted by the FDIC for good cause.

(2) In no event shall any extension granted pursuant to this paragraph exceed one year from December 8, 1993. If the insured state bank is expected to meet the requisite capital level prior to June 8, 1994, the bank may apply for permission to continue the activity. An insured state bank that does not meet the requisite capital requirements, and which has a majority-owned subsidiary that has equity investments in real estate which are not permissible for a subsidiary of a national bank, must divest the subsidiary or the equity investments in the real estate as soon as practicable but in no event later than December 19, 1996.

(c) *Exceptions*—(1) *Savings bank life insurance*. Any insured state bank that is located in Massachusetts, New York or Connecticut that is otherwise authorized to do so is not prohibited from engaging in the underwriting of savings bank life insurance *provided that*:

(i) The FDIC does not alter its determination made pursuant to section 24(e)(2) of the FDI Act (12 U.S.C. 1831a(e)) that such activities do not pose a significant risk to the insurance fund of which the bank is a member;

(ii) The insurance underwriting is conducted through a division of the bank that meets the definition of “department” contained in §362.2(h); and

(iii) The bank discloses to purchasers of life insurance policies, other insurance products and annuities which are offered to the public that the policies, other insurance products and annuities are not insured by the FDIC and that only the assets of the insurance department may be used to satisfy the obligations of the insurance department. The disclosure must be made prior to the time of purchase of the insurance policy, other insurance product, or annuity; must be prominent; and must be in a separate document clearly labeled “consumer disclosure” if the disclosure does not appear on the face of the policy, other insurance product, or annuity. The following or a similar statement will satisfy the disclosure obligation: “This [insurance policy, other insurance product, annuity] is not a federally insured deposit and only the assets of the bank’s insurance department may legally be used to satisfy any obligation of that department.” If state law or regulation provides for substantially similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph.

(2) *Insurance underwriting*. (i) A well-capitalized insured state bank that was lawfully providing insurance as principal on November 21, 1991 may continue to provide insurance as principal in the state or states in which the bank did so on November 21, 1991 so long as the insurance that is provided is of the same type which the bank provided as of November 21, 1991 and the insurance is only offered to residents of that

state, individuals employed in that state, and any other person to whom the bank provided insurance as principal without interruption since such person resided in, or was employed in, that state. In the case of resident companies or partnerships, the bank’s as principal activities must be limited to providing insurance to the company’s or partnership’s employees residing in the state and/or to providing insurance to cover the company’s or partnership’s property located in the state.

(ii) Any insured state bank or any subsidiary thereof that engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to do so.

(iii) Any title insurance subsidiary of an insured state bank described in §362.3(b)(7)(iii) may continue to provide title insurance provided that none of the transactions described in §362.3(b)(4)(ii) (other than a charter conversion) has occurred to the parent insured state bank since June 1, 1991.

(3) *Activities that do not present a significant risk*. The FDIC has determined that the following as principal activities do not represent a significant risk to the deposit insurance funds and that the listed activities may therefore be conducted by an insured state bank or its majority-owned subsidiary (as the case may be) without first obtaining the FDIC’s prior consent provided that the bank is otherwise authorized to engage in the activity under state law, the conduct of the activity by the bank and/or its subsidiary is otherwise permitted under federal law and regulation, and the bank meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this part does not preclude the FDIC from taking any appropriate action within its authority with respect to the activities if the facts and circumstances warrant such action.

(i) *Guarantee activities*. An insured state bank may:

(A) Directly guarantee the obligations of others as provided for in §347.3(c)(1) of this chapter; and

(B) Directly offer customer-sponsored credit card programs, and similar arrangements, in which the insured state bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers, *provided, however*, that the bank must establish the creditworthiness of the individual before undertaking to guarantee his/her obligations.

(ii) *Activities that are closely related to banking.* An insured state bank may:

(A) Engage as principal in any activity that is not permissible for a national bank provided that the Federal Reserve Board by regulation or order has found the activity to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), *provided, further however*, That this exception shall not be construed to permit the bank to directly hold equity securities that a national bank may not hold and which are not otherwise permissible investments for insured state banks pursuant to § 362.3(b); and

(B) Establish or acquire a majority-owned subsidiary which solely engages as principal in any activity that the Federal Reserve Board by regulation or order has found to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act.

(iii) *Securities activities conducted through a subsidiary of an insured nonmember bank.* An insured nonmember bank may conduct securities activities through a subsidiary of the bank in accordance with the requirements and restrictions of § 337.4 of this chapter in lieu of any requirement or restriction contained in this part.

(iv) *Equity securities held by a majority-owned subsidiary of an insured state bank—(A) Grandfathered investments in common or preferred stock and shares of investment companies.* Any insured state bank that has received approval to invest in common or preferred stock or shares of an investment company pursuant to § 362.3(d) may conduct the approved investment activities through a majority-owned subsidiary of the bank without any additional approval from the FDIC provided that any conditions or restrictions imposed with regard to

the approval granted under § 362.3(d) are met.

(B) *Bank stock.* An insured state bank may indirectly through a majority-owned subsidiary organized for such purpose invest in up to ten percent of the outstanding stock of another insured bank.

(C) *Stock of a corporation that engages in activities permissible for a bank service corporation.* An insured state bank may indirectly through a majority-owned subsidiary organized for such purpose invest in 50% or less of the stock of a corporation which engages solely in any activity that is permissible for a bank service corporation. (The term “bank service corporation” shall have the same meaning as is relevant for the purposes of the Bank Service Corporation Act (12 U.S.C. 1861 et seq.)). This exception shall not be construed to override any other limitation imposed by this part as to the amount of stock which may be held in a subsidiary without obtaining the FDIC’s consent.

(D) *Stock of a corporation which engages in activities which are not “as principal”.* An insured state bank may indirectly through a majority-owned subsidiary invest in 50% or less of the stock of a corporation which engages solely in activities which are not considered to be “as principal” as that term is defined in § 362.2(c).

(v) *Investments in adjustable rate and money market preferred stock.* An insured state bank may invest up to 15 percent of the bank’s total capital (as that term is defined by the appropriate federal banking agency) in adjustable rate preferred stock and money market (auction rate) preferred stock.

(d) *Application for consent to directly, or indirectly through a majority-owned subsidiary, engage as principal in an activity that is not permissible for a national bank—(1) Timing and place of filing application.* All applications for consent pursuant to paragraph (d) of this section should be filed with the regional director for the Division of Supervision for the FDIC regional office in which the insured state bank’s principal office is located. Applications for consent to continue an activity in which an insured state bank and/or its majority-owned subsidiary was engaged as of December 19, 1992, must be filed with the

appropriate regional office no later than February 7, 1994.

(2) *Continuation of activity while application is pending.* Any insured state bank which has filed an application in accordance with paragraph (d)(1) of this section requesting consent to directly or indirectly continue any ongoing activity may continue to engage in the activity while the application is pending provided, however, in no event may such an insured state bank or its subsidiary continue the activity for more than six months from the receipt of the application by the appropriate FDIC regional office unless the FDIC grants an extension or approval of the application has been granted.

(3) *Copy of application filed with another agency.* Unless the FDIC requests additional information, in a case in which an insured state bank has sought the approval of another federal or state regulatory authority to directly or indirectly engage in an activity for which consent is required under this part, the application filing requirements of paragraph (d) of this section may be satisfied by submitting to the FDIC a copy of the request as filed with such other regulatory authority provided that the request as filed with such authority substantially satisfies all of the information requirements of paragraph (d) of this section.

(4) *Form and content of application—(i) Form.* Applications filed pursuant to § 362.4(d) may be in letter form.

(ii) *Applications for consent to directly engage as principal in activities that are not permissible for a national bank.* Applications for consent to begin for the first time to directly engage as principal in any activity that is not permissible for a national bank, as well as applications for consent to continue to conduct as principal an activity in which a bank was engaged as of December 19, 1992 which is not permissible for a national bank, shall contain the following:

(A) A brief description of the activity, the manner in which it is or will be conducted, and the present and expected volume or level of the activity;

(B) A copy, if any, of the bank's feasibility study, financial projections and/or business plan regarding the conduct of the activity;

(C) A citation to the state statutory or regulatory authority for the conduct of the activity;

(D) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(E) A copy of a resolution by the bank's board of directors or trustees authorizing the filing of the application;

(F) A brief description of the bank's policy and practice with regard to any present or anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank or any related interest of such a person;

(G) A description of the bank's expertise in the activity; and

(H) Such other information as requested by the FDIC.

(iii) *Applications for consent to engage as principal through a majority-owned subsidiary in activities that are not permissible for a subsidiary of a national bank.* Applications for consent to begin for the first time to conduct, as principal, through a majority-owned subsidiary activities that are not permissible for a subsidiary of a national bank, as well as applications for consent for the bank's majority-owned subsidiary to continue to conduct, as principal, activities in which the bank's subsidiary was engaged as of December 19, 1992 that are not permissible for a subsidiary of a national bank, shall contain the following information:

(A) The information described in paragraph (d)(4)(ii) of this section;

(B) The amount of the bank's existing and proposed investment in the subsidiary; and

(C) The bank's investment in other subsidiaries conducting the same type of activity.

(iv) If an insured state bank previously obtained consent for a majority-owned subsidiary to engage as principal in a particular activity, any subsequent request for consent for another subsidiary of the bank to engage as principal in the same activity may omit the information described in paragraph (d)(4)(ii) of this section.

(5) *Phase-out of activities for which consent to continue has been denied*—(i) *Direct activity.* If a request filed pursuant to paragraph (d) of this section for consent to continue the direct conduct of an activity is denied, the bank must cease the activity as soon as practicable but in no event later than one year from the denial unless the FDIC specifically sets a different time which may in the FDIC's sole discretion be longer than one year. The FDIC may condition or restrict the conduct of the activity during the phase-out period as is deemed necessary in order to protect the affected deposit insurance fund.

(ii) *Activity in a majority-owned subsidiary.* If a request filed pursuant to paragraph (d) of this section for consent to continue the conduct of an activity through a majority-owned subsidiary of the bank is denied, the bank must divest its equity investment in the subsidiary as quickly as prudently possible but in no event later than December 19, 1996. The bank shall file a divestiture plan in accordance with § 362.3(c)(3) no later than 60 days after the bank receives notice that consent was denied. In the alternative, the bank may choose to discontinue the activity rather than divest its equity investment in the subsidiary in which case the activity must be discontinued as soon as practicable but in no event later than one year from the denial unless the FDIC specifically sets a different time period which may, in the FDIC's sole discretion, be longer than one year. If the bank elects to discontinue the activity rather than to divest the subsidiary, the bank must notify the FDIC of that decision no later than 60 days after the bank receives notice that consent was denied. The notice must be in writing and should be filed with the appropriate FDIC regional office. If an insured state bank is denied consent to continue impermissible equity investments in real estate through a majority-owned subsidiary and the bank elects to discontinue those investments rather than divest the subsidiary, the period of time which the subsidiary shall have to divest the equity investments in real estate shall not extend beyond December 19, 1996. The FDIC may condition or restrict the conduct of any ac-

tivity during the phase-out period as it deems necessary in order to protect the affected deposit insurance fund.

(e) *Disclosures.* Except as otherwise provided herein, any approval of an application filed pursuant to § 362.4(d) shall be subject to the condition that the bank and/or subsidiary shall provide any persons doing or about to do business with the bank and/or subsidiary written disclosure that the products, goods or services offered by the bank and/or subsidiary are not insured by the FDIC. If the products, goods or services are offered by a subsidiary of the bank, the disclosure must also indicate that the products, goods or services are not guaranteed by the bank and that only the assets of the subsidiary are available to satisfy the obligations of, or any contractual claims arising in connection with, the operation of the subsidiary. If the products, goods or services are offered by a department of the bank, the disclosure must indicate that only the assets of the department are available to satisfy the obligations of the department. Disclosures must occur prior to the time any contractual obligation to purchase any product, good or service arises; must be prominent; and must be clearly labeled "customer disclosure". If any communications from the bank to its depositors contain advertisements, promotions, or solicitations pertaining to the activities of the bank or its subsidiary which were approved pursuant to § 362.4(d) those communications must contain a disclosure that the products, goods or services are not insured by the FDIC. Disclosures will not be imposed under this part if state law or regulation establishes disclosure requirements which are substantially similar to those contained in this paragraph. Disclosure that the product, good or service is not an insured deposit will not be required if it is determined by the FDIC that the likelihood of confusing the product, good, or service with an insured deposit is minimal.

(f) *Conditions.* Approvals granted pursuant to § 362.4(d) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the bank and/or the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to

ensure that the activity is consistent with the purposes of federal deposit insurance.

(g) *Conditions and restrictions applicable to insured state banks and/or their subsidiaries that engage in insurance underwriting activities excepted under § 362.3(b)(7) or § 362.4(c)(2)(i).* (1) No insured state bank may directly or indirectly through a subsidiary underwrite insurance pursuant to the exception contained in § 362.3(b)(7) or § 362.4(c)(2)(i) unless the following conditions and restrictions are met:

(i) Any insurance underwriting directly conducted by the bank must be done through a division of the bank that meets the definition of "department" contained in § 362.2(h);

(ii) Any subsidiary that underwrites insurance must meet the definition of a "bona fide subsidiary" contained in § 362.2(d); and

(iii) The disclosure requirements of § 362.3(b)(3) and/or § 362.4(c)(1)(iii) are met to the same extent as they would be applicable if the bank and/or its subsidiary were conducting savings bank life insurance activities.

(2) Any insured state bank or a subsidiary of an insured state bank that would be eligible for the exception in § 362.3(b)(7) or § 362.4(c)(2) but for the requirements of paragraphs (g)(1)(i) or (g)(1)(ii) of this section may continue to conduct the insurance underwriting activities provided that the requirements of paragraph (g)(1)(iii) of this section are met and provided that the requirements of paragraphs (g)(1)(i) and (g)(1)(ii) of this section are met no later than one year from December 8, 1993.

[58 FR 64484, Dec. 8, 1993]

#### **§ 362.5 Notification of exempt insurance activities.**

Any insured state bank that was lawfully underwriting insurance in a state on November 21, 1991, and any insured state bank that has a subsidiary that was lawfully underwriting insurance in a state on November 21, 1991, shall submit a notice to the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from December 9, 1992, if those insurance underwriting activities would not

be permissible for a national bank or a subsidiary of a national bank. The notice requirement does not apply in the case of an insured state bank described in § 362.3(b)(7)(ii). The notice shall contain the following information:

(a) The name of the bank and/or subsidiary;

(b) The state or states in which the bank and/or its subsidiary was underwriting insurance on November 21, 1991;

(c) A recitation of the authority for the bank or subsidiary to conduct insurance underwriting activities;

(d) A list of the types of insurance that the bank and/or subsidiary provided to the public as of November 21, 1991 in the state(s) identified in paragraph (b) of this section. For purposes of this list, various lines of insurance are considered to be distinct types of insurance.

[57 FR 53234, Nov. 9, 1992. Redesignated at 58 FR 64483, Dec. 8, 1993]

#### **§ 362.6 Delegation of authority.**

The authority to review and act upon divestiture plans submitted pursuant to § 362.3(c)(2); the authority to approve or deny notices filed pursuant to § 362.3(d); the authority to approve or deny applications pursuant to § 362.3(b)(7)(ii); and the authority to approve or deny requests for consent pursuant to § 362.4(d) as well as to take any other action authorized by § 362.4(d) is delegated to the Director of the Division of Supervision or the Director's designee.

[60 FR 31384, June 15, 1995]

### **PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS**

Sec.

363.0 OMB control number.

363.1 Scope.

363.2 Annual reporting requirements.

363.3 Independent public accountant.

363.4 Filing and notice requirements.

363.5 Audit committees.

APPENDIX A TO PART 363—GUIDELINES AND INTERPRETATIONS

AUTHORITY: 12 U.S.C. 1831m.

SOURCE: 58 FR 31335, June 2, 1993, unless otherwise noted.